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March 15, 2013

VIA ECF

Honorable Harold Baer
United States District Judge
U.S. District Court, Southern District of NY
500 Pearl St.
New York, NY 10007-1312

Re: Kerry Ashdown v. Equinox Holdings, LLC, et al.
Civil Action No.: 13-01374

Dear Judge Baer:

We are counsel to defendants Joseph Matarazzo, Mauro Maietta, Lawrence Sanders, Matthew Plotkin, and Matthew Herbert (the "Individual Defendants") in the above-referenced action. We are also counsel to Equinox Holdings, Inc. ("Equinox") which, as discussed below, is the proper entity at interest, but has not yet been named to this lawsuit. We are writing to respectfully request that the Court schedule April 19, 2013 as a uniform date for Equinox and the Individual Defendants to move or answer in response to the Complaint.

Despite the fact that Equinox has not even been named as a party in this lawsuit to date, plaintiff has refused to consent to this date or any other date. There have been no requests for any adjournments.

Initially, we note that plaintiff filed two separate-- but nearly identical-- lawsuits both naming the Individual Defendants, as well as entities known as Equinox Holdings, LLC and Equinox Investments, Inc. as defendants. The second action was filed under civil action number 13-cv-1321 (the "Second Action"). While our firm was able to secure a copy of the Complaint

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for the Second Action from ECF, the Complaint for the above-referenced action was initially not obtainable via ECF or the Clerk's Office.¹

Accordingly, on March 5, 2013 (after leaving unanswered voicemails with plaintiff's counsel), the undersigned sent email correspondence to Walker G. Harman, plaintiff's counsel, requesting that he clarify why two actions were pending against the same parties and also provide our firm with a copy of the Complaint for the instant action, which we were unable to obtain. *See attached email correspondence annexed as Exhibit A.* We received no response from Mr. Harman to our voicemails or email.

Today, I called Mr. Harman to follow up on this discrepancy involving the two lawsuits, as well as to inform him that the wrong entities were named in the lawsuits. In response, Mr. Harman refused to provide any information regarding the discrepancy, except to state that he sent a letter to my law firm regarding this issue. As I informed him, no such letter was ever received by our firm. Nevertheless, he still refused to provide any information and told me to "search [my] offices."

During the call, I additionally informed Mr. Harman that he had named the wrong entities to the lawsuit, but that Equinox would cooperate in whatever measure he wanted to take to amend the parties and the caption. Mr. Harman would only vaguely respond that I should "send a letter to his firm." I also requested that the parties agree to a uniform date for Equinox and the Individual Defendants to respond to the Complaint. He refused to do so and ended the call by abruptly hanging up the phone. Subsequent to the phone call, our paralegal checked Pacer today and learned that the Second Action had been discontinued. She was also able to obtain a copy of the Complaint for the instant action, which apparently became available in the ECF system only within the last several days.

Accordingly, we were compelled to write this letter to the Court to request a uniform date for Equinox and the Individual Defendants to respond. As an initial matter, we note that Equinox is not even a party to this lawsuit at this point, so rather than responding separately on behalf of the Individual Defendants and Equinox, we would prefer to set one date for all parties to respond. Additionally, despite our efforts to obtain a copy of the Complaint for this action through ECF, the Clerk's Office, and plaintiff, we did not obtain a copy of the Complaint until today. Finally, the undersigned has a number of scheduling issues over the next couple of weeks, so some additional time is needed in April to prepare a response. Specifically, the undersigned is required to submit a post-hearing brief by next Friday, March 22, 2012, as well as reply papers in a separate proceeding. I will then be on vacation out of state through April 1st with my wife and children.

¹ We note that the affidavit of service filed for this action indicates that both the summons and complaint were served, but our law firm only received a copy of the summons.

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For these reasons, it is respectfully requested that the Court set April 19, 2013 as a uniform date for Equinox and the Individual Defendants to move or answer in response to the Complaint.

Respectfully yours,

A handwritten signature in black ink, appearing to read "P. McPartland". The signature is written in a cursive, somewhat stylized font. The "P" is large and loops around the first part of the name. The "McPartland" is written in a more fluid, cursive script. There is a small mark at the end of the signature that looks like a checkmark or a stylized "x".

Patrick McPartland

cc: Walker Green Harman, Jr., Esq. (via email)

EXHIBIT A

Patrick Mcpartland

From: Patrick Mcpartland
Sent: Tuesday, March 05, 2013 3:52 PM
To: 'wharman@theharmanfirm.com'
Cc: Lawrence Rosen
Subject: Kerry Ashdown v. Equinox Holdings, LLC, et al.

Good afternoon Mr. Harman,

Following up on my voicemail (and the earlier voicemail of my partner Larry Rosen), we noticed that your firm has filed two complaints with the SDNY under two separate civil action numbers (Civil Action No. 13-cv-1321 and Civil Action No. 13-cv-1374) against the same parties (i.e. Equinox Holdings, LLC, et al.).

We have a copy of the complaint for Civil Action No. 13-1321; however, the complaint for Civil Action No. 13-cv-1374 is not available by ECF or through the Clerk's office.

Please email a copy of the complaint for Civil Action No. 13-cv-1374, along with an explanation as to why two separate actions are pending against the same parties.

Thank you.

Patrick McPartland, Esq.

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